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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Fifth Report and Order	))))))))	MM Docket No. 92-266 MM Docket No. 93-215

REPLY TO OPPOSITIONS/COMMENTS OF QVC, INC.

QVC, Inc. ("QVC"), by its attorneys, respectfully files this Reply to Oppositions/Comments in the above-captioned proceeding.[1]

In its Petition for Reconsideration, QVC demonstrated that the Commission should reconsider its decision so as to (1) not require the offset of any revenues against the twenty-cent "per-channel adjustment factor," i.e., the markup cable operators may charge subscribers to cover the network costs of activating channels; and/or (2) eliminate from any revenue offset requirement sales commissions paid by home-shopping services to cable operators. In addition, the Home Shopping Network, Inc. ("HSN") urged the Commission to (1) "clarify that the sales commission offset rule does not apply to shop-at-home or video retail programming services"; and/or (2) "eliminate the sales

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[1] Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket Nos. 92-266 and 93-215, Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, FCC 94-286 (released November 18, 1994) ("Fifth Report and Order").

commission offset requirement."[2] No programmer, cable operator, state regulatory agency, or local franchising authority has opposed any of these requests. Further, the only other party to address the issue of offsetting home-shopping revenues against network costs, Jones Infomercial Network, Inc., fully supported the positions advanced by both QVC and HSN.[3] The record thus unequivocally supports Commission grant of the QVC and HSN Petitions for Reconsideration.

THE COMMISSION SHOULD ELIMINATE THE OFFSET OF HOME-SHOPPING SALES COMMISSIONS AGAINST NETWORK COSTS.

A. The Commission Should Not Offset Any Revenues Against Network Costs.

As QVC discussed in its Petition, the revenue offset requirement is rooted in the Commission's concerns for protecting consumers from impermissible rate increases by curtailing the manipulation of programming costs that may be passed through to subscribers.[4] The Commission has explicitly stated that the twenty-cent network cost markup represents an operator's "cost of adding the channel plus a reasonable profit . . . exclusive of

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[2] HSN Petition for Reconsideration at 9.

[3] "Jones supports the petitions for reconsideration submitted by Home Shopping Network, Inc. . . . and QVC, Inc. . . . ." Jones Comments in Support of Petitions for Reconsideration at 1. Moreover, "Jones fully supports the request set forth in each of the HSN and QVC Petitions that the Commission eliminate the requirement that cable operators that add video retailing or shop-at-home channels offset increased system costs . . . with any sales commissions earned by the cable operator and paid by the shop-at-home channels." Id. at 2.

[4] QVC Petition at 5-6; see also First Rate Order, 8 FCC Rcd. 5631, n. 602 (1993).

programming costs."[5] Thus, network costs explicitly are separate and distinct from programming costs that may be vulnerable to artificial manipulation or inflation.

Further, as compared to programming costs, network costs are more stable and more subject to objective verification. Network costs do not vary for different programming because the costs of adding a channel on a system are the same regardless of the value of the programming. Moreover, the Commission has ensured the stability of network costs chargeable to subscribers by capping them at twenty cents per added CPST channel.[6] Because they are capped, network costs are no longer the sort of inflatable or manipulable costs that are the concern of the revenue offset requirement.

Given the purpose of the offset requirement -- to eliminate the impermissible manipulation of programming cost pass-throughs -- combined with the stable and unmanipulable nature of capped network costs, it is inconsistent with the objectives of rate regulation to impose an offset requirement against network costs.

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[5] Fifth Report and Order at ¶ 73 (emphasis added).

[6] As the Commission explained, twenty cents "falls within the historical range of 15-22 cents by which cable operators in a competitive environment would adjust rates for the addition of a new programming channel, exclusive of programming costs." Id.; see also id., Technical Appendix at 2.

B. The Commission Should Exclude Sales Commissions From the Offset Requirement.

An offset requirement is unnecessary and impracticable for several reasons, as enumerated in QVC's earlier comments.[7] However, in the event that the Commission does retain a revenue offset, it should exclude sales commissions paid from home-shopping services to cable operators. The inclusion of home-shopping sales commissions in the revenue offset requirement is inconsistent with overall rate regulation policies as it favors certain programming formats over others.

Due to ambiguities created by the initial offset rules,[8] several programmers raised the concern that the offset rules discouraged the carriage of new programming and the offering of home-shopping services. In response, the Cable Services Bureau clarified that, in the case of QVC's home-shopping services -- where payments flow only from the programmer to the operator -- neither sales commissions, nor launch incentives paid to cable operators, would count toward the revenue offset requirement.[9] The Cable Services Bureau explained that this result would "fairly balance the interests" of all interested parties, and

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[7] See generally QVC Petition for Reconsideration; see also Opposition of QVC at 6-7.

[8] See First Rate Order at n. 602.

[9] Clarification Letter to QVC Network, Inc., 1994 FCC LEXIS 2000, released May 9, 1994.

"facilitate the provision and promotion of useful home-shopping services . . . ."[10]

The offset rules announced in the Fifth Report and Order[11] undermine these stated objectives and, more broadly, upset the Commission's policy of promoting programmer neutrality.[12] Requiring the offsetting of revenues from home-shopping services while excluding those from other sources, primarily advertising, creates an overwhelming disincentive for cable operators to carry home-shopping services. Contrary to the Commission's intention to "make no judgment about the relative value to subscribers of high or low cost channels,"[13] the offset rule favors the carriage of traditional, advertiser-supported programming, whose revenues do not trigger an offset, over home-shopping services, whose revenues do trigger an offset.

C. The Harmful Effects of the Commission's Twenty-Cent Offset Requirement Have Already Been Demonstrated in the Programming Marketplace.

Even though the Commission's requirement that home-shopping sales commissions be deducted from the twenty-cent per-channel adjustment factor has only been in force for a few months, its negative impact already has been felt by QVC in its negotiations with MSOs for carriage of QVC's programming services. Since the

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10 Id. at 2.

11 Fifth Report and Order at ¶ 74 and n. 27.

12 See QVC Petition for Reconsideration at 11-13; HSN Petition for Reconsideration at 3-6.

13 Id., Technical Appendix at 30.

offset requirement became effective, QVC has had little success in getting MSOs to launch any new shopping channel, making it very difficult for QVC to increase the distribution of its programming, particularly its second channel, Q2. In the past few months, QVC has been told by several MSOs that the offset requirement was their principal reason for refusing, hesitating, or delaying carriage of QVC programming. Moreover, the twenty-cent offset requirement threatens to cause the loss of existing distribution of QVC services. In order to take full advantage of the twenty-cent network cost markup, MSOs are expressing a willingness to switch out shopping channels based on the better terms and conditions they can receive from non-home-shopping programming services, such as advertiser-supported channels.

In time, the problems caused by this offset requirement -- i.e., the loss of existing distribution and the inability to increase distribution of home shopping programming services -- will only become more pronounced. The Commission should act expeditiously to reverse these regulation-induced trends by granting the unopposed QVC and HSN petitions.

CONCLUSION

For the foregoing reasons, QVC respectfully urges that the Commission (1) eliminate the offset of revenues against the twenty-cent "per-channel adjustment factor"; and/or (2) eliminate from the offset requirement revenues from home-shopping services.

Respectfully submitted,

QVC, INC.

Jonathan H. Kopp

Sue D. Blumenfeld
Francis M. Buono
Jonathan H. Kopp

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036-3384
(202) 328-8000

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CERTIFICATE OF SERVICE

I, Jonathan H. Kopp, hereby certify that I have caused the foregoing "Reply to Comments/Oppositions of QVC, Inc." to be served this sixteenth day of February, 1995, by first class mail, postage prepaid, to the following individuals:

Brenda L. Fox
Peter H. Feinberg
Michael J. Pierce
DOW, LOHNES & ALBERTSON
1255 Twenty-Third Street, N.W.
Suite 500
Washington, D.C. 20037

Jonathan H. Kopp
Jonathan H. Kopp